IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 172 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

MINOR JAGATSINH KHODUBHA PARMAR

Appearance:

1. First Appeal No. 172 of 1987

MR ARUN K SHAH for Petitioner No. 1

NOTICE SERVED for Petitioner No. 1

MR GAURANG H BHATT for Respondent No. 1

..... for Respondent No. 2

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE M.S.SHAH

Date of decision: 02/04/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. This appeal under Section 110 (D) of the Motor Vehicles Act,1988 (for the "the Act") is directed against the judgement and award dated 1.5.1986 in M.A.C.Petition No.141 of 1983 by the M.A.C.Tribunal (Aux.) Surendranagar, awarding compensation of Rs.94,000/- for the bodily injury caused to the claimant in the accident which occurred on 8.1.1983 on a road between Surendranagar and Vadhvan.

2. Injured Jagatsinh Khodubha, a student of 10th standard was riding a bicycle on 8.1.1983 on Surendranagar - Vadhvan highway. That when he reached opposite New Age factory on the said road, S.T.Bus bearing registration No.GRR 8476 came from the opposite direction, driven at an excessive speed and dashed with the cycle causing injury to Jagatsinh. Jagatsinh sustained crush injury on his left leg besides injury on the head with fracture on the skull bone. The injured was removed to the hospital where he remained as an indoor patient for 31 days. The claim petition came to be filed claiming compensation on account of rash and negligent driving on the part of the driver of the aforesaid S.T.Bus. The claims Tribunal, appreciating oral as well as documentary evidence, awarded compensation of Rs.94,000/- including amount of Rs.30,000/- by way of pain, shock and suffering; Rs.8000/- by way of medical expenses, Rs.54,000/- by way of future economic loss, holding the driver of the S.T.Bus solely negligent in the occurrence of the accident, with 12% interest from the date of petition till realization / deposit of the compensation amount and the cost. It is this award which is assailed in the present appeal by the appellant - S.T.Corporation.

3. R & P of the case have been called from the concerned claims Tribunal. We have perused the same.

4. It is submitted by Mr.M.K.Shelat, learned advocate for the appellant that the accident was the result of the cyclist loosing the balance as another boy sitting on the pillion carrier suddenly jumped from the cycle.

5. Ajimbhai Alibhai - driver of the S.T.Bus involved in the accident has deposed at Exh.56. It is deposed by him that on 8.1.1983, he took the charge of the S.T.Bus

bearing registration No.GRR 8476 as the driver thereof from Morbi; that the accident took place at the distance of 1 k.m. from Surendranagar opposite New Age Factory which was on Surendrangagar - Vadhvan Highway. It is further deposed that when he was driving the bus, he saw a cyclist coming from the opposite direction with a boy sitting on the pillion carrier of the cyclist; that boy suddenly jumped from the cycle and the cyclist lost the balance and cycle dashed with the right hand side middle portion of the S.T.Bus.

In the cross-examination, it has been deposed that 2 to 3 cycles were going ahead of the said S.T.Bus towards Vadhvan. It is also admitted that the S.T.Bus was following the cycles. The witness has denied the suggestion that he tried to over take these cycles and took the bus ahead of the cycles. It may be appreciated that ahead of the S.T.Bus there were 2 to 3 cycles going in the same direction. Even if the boy sitting on the pillion carrier of the cycle had jumped from the bicycle then, the cyclist may loose the balance momentarily but, the fact that the cyclist has been hit by the S.T.Bus would suggest how close the S.T.Bus must have come to the cycle when the accident took place. It appears that in the process of over taking the cycles going in the same direction ahead of the bus, the S.T.Bus must have come on the wrong side of the road and it must have come so close that the applicant was dashed by the right middle portion of the body of the bus. Looking to the evidence, it does not appear that the boy sitting on the pillion carrier getting down from the cycle led to the accident but, the S.T.Bus came so close to the applicant who was coming from the opposite direction and because of the practically no distance between the claimant coming from the opposite direction and the S.T.Bus, the S.T.Bus gave dash causing injury to the claimant. Appreciating the evidence of the claimant as well as the driver of the bus, we do not find any illegality committed by the claims Tribunal in recording the finding of fact that it is the driver of the S.T.Bus who is solely negligent in the occurrence of the accident, and therefore, we are unable to accept the submission of Mr.Shelat that the claimant contributed to the occurrence of the accident.

6. As far as the quantum is concerned, the claims Tribunal has estimated the notional income of the injured at Rs.600/- per month. The medical evidence on record suggests that in the accident the injured suffered permanent partial disability to the extent of 50% in relation to the body as a whole. In the accident, the left leg of the claimant was so badly crushed which was

required to be amputed below the knee joint. Besides the crush injury on the left leg the injured also suffered fracture of the skull bone besides other minor injuries and that the injury caused in the accident required the claimant to be admitted as an indoor patient for 31 days in the hospital.

7. Now, considering the notional income of Rs.600/per month and reducing it by 50% in view of the permanent partial disability suffered by the claimant, the future economic loss has been estimated at Rs.300/per month. The injured at the time of accident was a student of 10th standard and aged about 17 years. The claims Tribunal adopting the multiplier of 15 years purchase factor, cannot be faulted looking to the age of the claimant. In our opinion, the quantum arrived at by the claims Tribunal does not call for any interference as the same is just, proper and consistent with the evidence on record and the legal position in this behalf.

8. Mr. Shelat, learned advocate has lastly submitted that the rate of interest awarded by the claims Tribunal is on higher side. In the impugned award, the claims Tribunal has awarded 12% rate of interest from the date of application till the realization / deposit of the compensation amount.

9. In the case of Abati Bezbaruah Vs. Deputy Director General, Geological Survey of India and another, 2003 AIR SCW 1266, in the concurring judgement, in Para.18, it has been observed, ".... That the rate of interest was awarded on the amount of compensation as a matter of judicial discretion and the rate of interest must be just and reasonable depending upon the facts and circumstances of each case, and taking all relevant factors including inflation, change of economy, policy being adopted by the Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim and enormity of suffering, loss of future income, loss of enjoyment of life etc. into consideration. No rate of interest is fixed under Section 171 of the Act.... Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept him out of money which ought to have been paid to him. No principle could be deduced nor any rate of interest can be fixed to have a general application in motor accident claim cases having regard to the nature of provisions under Section 171 giving discretion to Tribunal in such matter ....".

10. As seen above, in the instant case, the claimant

suffered crush injury on the left leg requiring amputation of the left leg below the knee joint, fracture of skull bone and indoor hospitalization of 31 days. Looking to the injury as pointed out above, the suffering on account of crush injury requiring amputation of left leg would have life long suffering on the claimant. The accident took place on 8.1.1983 and the petition claiming compensation came to be filed on 10.3.1983. Having regard to all these and following the principle in the case of Abati Bezbaruah (supra), we do not find this to be a fit case to interfere with the rate of interest awarded by the claims Tribunal in the impugned award.

11. Above discussion would reveal that the impugned award does not call for any interference as no illegality is suggested therefrom and the appeal being devoid of merit, is liable to be dismissed.

12. In the result, appeal is dismissed with no order as to costs.

(N.G.Nandi,J.)

(M.S.Shah,J.)

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